

ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

RECEIVED

JUN 22 2000

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

WT Docket No. 97-82 /

In the Matter of

Amendment of the Commission's Rules
Regarding Installment Payment Financing
for Personal Communications Services (PCS)
Licenses

)
)
)
)
)
)
)

COMMENTS OF NEXTEL COMMUNICATIONS, INC.

NEXTEL COMMUNICATIONS, INC.
2001 Edmund Haley Drive
Reston, VA 20191
(703) 433-4000

Robert S. Foosaner
Lawrence R. Krevor
Laura L. Holloway

Its Attorneys

DOW, LOHNES & ALBERTSON, PLLC
1200 New Hampshire Avenue, N.W.
Suite 800
Washington, D.C. 20036-6802
(202) 776-2000

Leonard J. Kennedy
Laura H. Phillips
Christina H. Burrow

No. of Copies rec'd 0 + 4
List A B C D E

June 22, 2000

SUMMARY

Section 309(j) of the Communications Act requires that the Federal Communications Commission (the “Commission”) develop Personal Communications Services (“PCS”) auction rules that will bring the benefits of competition and new wireless services to *all* Americans. In 1994, the Commission determined that a set-aside of certain PCS licenses for small businesses (the C and F Block licenses) was necessary to carry out Section 309(j)’s mandate; *i.e.*, encouraging broad participation in the PCS auctions by small entrepreneurs that might otherwise be unable to bid successfully against large, well-funded companies.

Given, however, the hard lessons of the past five years of C Block licensee failures, and the competitive evolution of the wireless marketplace during that time, it is now evident that continuing to set aside the C and F block PCS licenses for small businesses in the upcoming PCS reauction will disserve the public interest. Despite the efforts of a few small businesses that have built out viable commercial networks, the C Block has been riddled with the bankruptcies of firms that did not have the financial ability to acquire this spectrum or to build and operate competitive wireless communications systems, particularly in metropolitan areas.

It will not be any easier in the future. Since the initial C Block auctions, incumbent cellular, other PCS licensees and Specialized Mobile Radio carriers have vastly expanded the geographic coverage, capacity and quality of their networks. These competitors have spent billions of dollars to build systems, establish their brand identity and launch service. With five intensely-competitive Commercial Mobile Radio Service (“CMRS”) providers in most markets, it will be nearly impossible for an entity meeting the small business asset and revenue caps to obtain financing both for spectrum acquisition and the immense cost of building systems competitive with the coverage and services of incumbent providers.

Nextel commends the Commission for recognizing in the *Further Notice* the realities of the contemporary CMRS marketplace and proposing open bidding eligibility for some of the reaucted C Block licenses. The Commission's tentative decision to maintain a small business set aside of one C Block license in markets above 2.5 million POPs (the proposed Tier 1), and two licenses in markets below 2.5 million POPs (the proposed Tier 2), recognizes that small businesses, as a result of the very factors that qualify them as small, are ill-suited to obtain, build out and operate capital-intensive CMRS systems.

The Commission's proposal does not, however, go far enough. Based on its own experience in building a nationwide CMRS network, Nextel has analyzed the costs a new entrant would incur to build and operate a 10 MHz CMRS system competitive with incumbent CMRS services. Given the cost of acquiring spectrum, and the even greater capital expenses required to enter the market with a competitive product *vis-à-vis* "mature" CMRS incumbents, few, if any, small businesses will be successful. Thus, continuing to set aside the C and F Block licenses for small businesses is unlikely to achieve the Commission's policy goals of assuring broader small business participation in the CMRS marketplace. On the contrary, it will lead to more bankruptcies and a lost opportunity to promote competition and the expeditious development of advanced wireless communications services such as the third generation services being developed in Europe.

Notwithstanding the above, if the Commission decides to maintain a small business set-aside, it should be limited to no more than a 10 MHz license in markets of under one million POPs – where true small businesses will have the greatest (albeit a limited) chance of market success.

Further, if any set-aside is maintained, it must be fine-tuned to avoid providing unintended and unjustified benefits to carriers that no longer need or truly qualify for a special bidding advantage. Specifically, the Commission must eliminate its “grandfathering” exception to the small business rules that allows participants in the initial C Block auctions to bid in the reauction *regardless* of their current size. The Commission time and again has stated that the C and F Block set-aside was intended to benefit small business that, according to the Commission, could not successfully compete with large entities in open auctions to acquire PCS spectrum. Given this, it makes no sense to grandfather the formerly small businesses that have grown or merged to many times beyond the Commission’s small business set-aside qualifications. Simply stated, they are no longer in need of this advantage and no longer qualify for it.

The Commission must also review its rules on reporting “total assets” for purposes of determining whether an entity qualifies under the “entrepreneur block” \$500 million asset cap, and must require applicants to report total assets as of the “short form” filing deadline. Finally, a once-qualified small business should not be grandfathered if, in total, it has undergone ownership changes of greater than 20 percent since its original license was issued.

If a set-aside is maintained without these changes, the Commission will be conducting an auction in which some multi-billion dollar entities participate as small businesses, while others are barred. Permitting some multi-billion dollar corporate “elephants” to participate in auctions intended for corporate “mice,” through misapplication of the Commission’s grandfathering policies, would make a mockery of the designated entity rules and would deny true small businesses any real opportunity to obtain set-aside licenses. Maintaining any grandfathering exception is contrary to the public interest, inconsistent with Congress’ objectives under Section

309(j), and is irrational, arbitrary and capricious. Accordingly, the Commission's grandfathering provisions for the C and F Block reauction must be eliminated.

TABLE OF CONTENTS

	Page
SUMMARY	i
I. INTRODUCTION	2
II. THERE IS NO LEGAL OR PUBLIC POLICY JUSTIFICATION FOR MAINTAINING SET-ASIDES	5
A. The C Block Spectrum Should Be Open to All Qualified Bidders.....	6
(1) The C Block Legacy Shows Small Businesses Are Ill-Suited to Obtain and Build Major Markets.	6
(2) If Any Set-Aside Is Maintained, It Must Be Limited to Markets Below One Million POPs.	12
B. Bidding Credits Effectively Assure Small Business Opportunities.....	14
C. The F Block and Previously Unsold 15 and 30 MHz Licenses Must Be Open to All Qualified Bidders	14
III. IF ANY FORM OF SET-ASIDE IS MAINTAINED, IT MUST BE LIMITED TO TRUE SMALL BUSINESSES	17
A. No Public Policy Purpose Is Served by the Grandfathering Exception.....	18
B. Small Business Eligibility Must be Based on Complete and Current Financial Information.....	20
IV. CONCLUSION.....	23

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
)	
Amendment of the Commission's Rules)	
Regarding Installment Payment Financing)	WT Docket No. 97-82
for Personal Communications Services (PCS))	
Licenses)	
)	

COMMENTS OF NEXTEL COMMUNICATIONS, INC.

Nextel Communications, Inc. ("Nextel"), by its attorneys, hereby submits its comments on the Further Notice of Proposed Rulemaking in the above-captioned proceeding.¹ Nextel supports the Federal Communications Commission's ("Commission") tentative proposals to encourage broader participation in the reauction of the long-fallow C and F Block personal communication service ("PCS") spectrum and urges the Commission to take bold steps to ensure that this spectrum is put to its highest and best use. As the Commission finalizes the reauction rules, its overriding obligation, under Section 309(j) of the Communications Act of 1934, as amended, is to advance the development and competitiveness of wireless communications services. Nextel urges the Commission to take a comprehensive look at the developing wireless marketplace and make targeted rule changes that enhance competition.²

¹ Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licenses, *Further Notice of Proposed Rulemaking*, WT Docket 97-82, FCC 00-197 (rel. June 7, 2000) ("*Further Notice*").

² See In the Matter of Reauction of Certain C and F Block Broadband PCS Licenses, *Petition for Expedited Rulemaking or, in the Alternative, Waiver of the Commission's Rules*, filed by Nextel Communications, Inc. (Jan. 31, 2000) at 3-10. ("Nextel Petition"). Nextel requests that the Nextel Petition and associated pleadings be incorporated into this docket and considered by the

continued...

I. INTRODUCTION

The licenses that are the subject of this proceeding are available for reauction because of the failure of the Commission's well-intentioned attempts to carry out the policy objectives of Section 309(j) by reserving the 1.9 GHz C and F Block PCS licenses for entities that qualify as "entrepreneurs" or "small businesses." While this "set-aside" may have been justified when it was adopted in 1994, by the time the licenses were actually auctioned in late 1995 and early 1996, the wireless market had changed sufficiently so that it was no longer economically viable for small businesses to acquire licenses on a small market or "niche" service basis – as the Commission had contemplated in adopting the set-aside. Reacting to these developments, C Block "small businesses" such as NextWave Personal Communications, Inc. ("NextWave") bid on and won C Block licenses on a massive nationwide scale, only to declare bankruptcy on the same massive scale less than two years later.³ Accordingly, since the C Block auction closed

...continued

Commission when making decisions in this proceeding. *See, e.g.,* In the Matter of Petition of Nextel Communications, Inc. for Expedited Rulemaking or, in the Alternative, Waiver of the Commission's Rules, DA 00-191, *Reply Comments of Nextel Communications, Inc.* (Mar. 1, 2000) ("Nextel Reply"); In the Matter of AT&T Wireless Services, Inc. and BellSouth Corporation Petitions for Waiver and Expedited Action and Bell Atlantic Mobile, Inc. Petition for Limited Forbearance from the CMRS Spectrum Cap Limits, DA 00-318, *Comments on Petitions for Waiver of, or Forbearance from, Spectrum Cap Limits*, filed by Nextel Communications, Inc. (Mar. 3, 2000) ("Nextel Spectrum Cap Comments"); and In the Matter of Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licenses, WT Docket No. 97-82, *Comments On and Opposition To Petition for Reconsideration*, filed by Nextel Communications, Inc. (Apr. 17, 2000) ("Nextel Opposition").

³ *See, e.g.,* In re Pocket Communications, Inc. and DCR PCS, Inc., Nos. 97-5-4105-ESD and 97-5-4106-ESD (Bankr. D. Md. filed Mar. 31, 1997); In re GWI PCS1, Inc. et al., No. 3:97-39676-SAF-11 (Bankr. N.D. Tex. filed Oct. 10, 1997); In re NextWave Personal Communications, Inc., No. 98-B-21529 (Bankr. S.D.N.Y. filed June 8, 1998); In re Magnacom Wireless, L.L.C., No. 98-39048 (Bankr. W.D. Wash. filed Oct. 28, 1998); In re NextWave Communicators PCS

continued...

over four years ago, many C Block licenses in major market areas have languished unused, contrary to the prompt service and deployment mandates of Section 309(j).

The Commission subsequently recovered many of these licenses and announced its intent to reauction them beginning July 26, 2000.⁴ In January of this year, Nextel requested that the Commission open the C and F Block reauction to all interested parties so as to best ensure that this long fallow spectrum is promptly put to use.⁵ Detailing the significant changes that have occurred in the wireless industry since the C and F Block set-asides were adopted in 1994, Nextel demonstrated that the Commission's original vision for small business participation in the CMRS marketplace is no longer valid.⁶ Nextel is pleased, therefore, that in the *Further Notice* the Commission has correctly concluded that expanding C Block bidding eligibility will best serve the public interest. In fact, the Commission should completely eliminate its proposed entrepreneur's block set-aside. Continuation of the set-aside will not guarantee successful entry of small businesses into commercial mobile radio service ("CMRS") service. On the contrary, it is likely to spawn additional future bankruptcies rather than increased competition.

...continued

Limited Partnership, No. 98-47996 (Bankr. S.D.N.Y. filed Nov. 5, 1998); *In re Kansas Personal Communications Services, Ltd.*, No. 99-21747 (Bankr. Kan. filed July 19, 1999); *In re Airadigm Communications, Inc. d/b/a Wireless Communication PCS d/b/a Einstein PCS*, No. 99-33500 (Bankr. W.D. Wis. filed July 28, 1999); *In re Personal Communications Network, Inc.*, No. 99-20207 (Bankr. E.D.N.Y. filed Aug. 6, 1999).

⁴ See Auction of C and F Block Broadband PCS Licenses; *Public Notice*; DA 00-49 (released Jan. 12, 2000). The *Further Notice* was released concurrent with a Public Notice that changed the auction start date to November 29, 2000.

⁵ See Nextel Petition.

⁶ Nextel Petition at 3-10.

If, however, the Commission decides to maintain a set-aside, it should be limited to a single 10 MHz license in Basic Trading Areas (“BTAs”) with populations at or below one million persons. This approach would preserve the set-aside where it has some small chance of achieving its intended public policy goals, while fostering increased competition and facilitating the ability of wireless providers to offer third generation (“3G”) and other advanced services comparable to those being developed by wireless carriers in Europe today.

If the Commission reserves any of this PCS spectrum under a set-aside, that set-aside must be available only to true small businesses and not entities that have outgrown the Commission’s original definition of “small.” For this reason, the Commission must eliminate its “grandfathering” exception to the C Block auction eligibility rules. If, however, the grandfathering policy is maintained, the Commission must ensure that it does not permit this unjustified windfall to extend to large, well-funded companies that should not qualify to bid on spectrum reserved for small businesses or entrepreneurs. Maintaining the grandfathering exception would eliminate any opportunity for true small businesses in the set-aside auction,⁷ and instead would provide competitive advantages to companies that have grown far beyond the size of the small business revenue and asset caps through exploiting large loopholes in the current eligibility rules.

⁷ See Letter from John DeFeo, President and Chief Executive Officer, U.S. AirWaves, to William Kennard, Chairman, Federal Communications Commission (May 22, 2000) (explaining how U.S. AirWaves lost the opportunity to acquire PCS licenses in the original C Block auction because NextWave inflated its bids beyond economically justifiable limits).

II. THERE IS NO LEGAL OR PUBLIC POLICY JUSTIFICATION FOR MAINTAINING SET-ASIDES

The *Further Notice* proposes to reconfigure available 30 MHz C Block BTA licenses into three discrete 10 MHz licenses, thus increasing the number of available C Block licenses from 88 to 264. The *Further Notice* also proposes to “tier” BTA markets and allow open bidding on two of the three new 10 MHz C Block licenses in those BTAs with a population of 2.5 million persons or more. In BTAs with less than 2.5 million persons, the Commission would permit open bidding on only one of the three 10 MHz C Block licenses.⁸

Nextel commends the Commission’s recognition that at least some of the C Block spectrum should be open to all bidders. However, by continuing *any* set-aside, the Commission is ignoring the inherent inconsistencies of a regulatory system that encourages a company with less than \$500 million in assets to embark on a business plan for which the upfront investment for spectrum, network capital expenditures and other start-up costs is greater than its ability to pay. This investment is required of the entity prior to selling a single product to any customer. Further, this small business, after spending hundreds of millions of dollars on spectrum and potentially hundreds of millions of additional dollars on infrastructure and deployment, would have to compete with at least five mature wireless providers with established brands in the fiercely competitive wireless telecommunications market.

Thus, there is no legal, policy, factual, or financial justification for setting aside the CMRS spectrum for “small businesses” since *true* small businesses – by definition – do not have and cannot attract the financial prerequisites to acquire, construct, and deploy a competitive

⁸ *Further Notice* at ¶¶ 28-30.

wireless telecommunications system in almost any BTA in the U.S. The upfront financial investment, as explained in greater detail below, simply requires more funding than a true designated entity can reasonably be expected to achieve. Yet, the Commission's proposal largely ignores this reality.

A. The C Block Spectrum Should Be Open to All Qualified Bidders

Inexplicably, the Commission proposes to continue a C Block set-aside in 174 of the 264 reconfigured licenses by reserving 10 MHz for qualifying small business entities in BTA markets with over 2.5 million POPs and 20 MHz in markets with populations under 2.5 million.⁹ Under the Commission's proposal, nearly 66% of the reaucted licenses would be reserved exclusively for small businesses despite the fact that small business entry will be more expensive and difficult today than it was five years ago for the initial C Block licensees. As demonstrated below, the proposal is not in the public interest. While small businesses should be encouraged through the use of bidding credits to bid on all licenses, a continued set aside would make ill-use of this spectrum.

(1) The C Block Legacy Shows Small Businesses Are Ill-Suited to Obtain and Build Major Markets.

The history of the C Block firmly establishes that entry into the CMRS marketplace at 1.9 GHz requires more capital than designated entities, restricted by the Commission's ownership and size qualifications, can reasonably expect to obtain. It is little wonder that NextWave, with

⁹ The proposed Tier 1 markets would include nine very large metropolitan areas ranging in size from over 18 million POPs in New York City to approximately 2.5 million POPs in the Pittsburgh, Pennsylvania BTA. Using the Commission's proposed threshold, the Tier 2 markets where 20 MHz would be set-aside would begin with the San Diego BTA, a market with an official population of 2.49 million, ranging down to the Logan, West Virginia BTA, with a population of approximately 43,000.

its designated entity-qualified limited assets, its limited operating experience, and facing increasingly aggressive competition, was unable to attract the billions of dollars of financing that was required to execute, build out and operate in major markets. Similarly, other small businesses – also restrained by the Commission’s designated entity rules – were unable to fulfill their commitments to the Commission and to the public. Nothing in the record suggests that true small businesses entering the market in 2000 or beyond will fare any better than nearly all of the designated entities that attempted to enter the marketplace in 1996-97. On the contrary, the record demonstrates that small businesses today will face even greater challenges – financially and competitively.¹⁰ Thus, setting aside 10 MHz in any major market harms the public interest by artificially restricting the use of valuable spectrum resources.

Throughout this proceeding Nextel has advanced numerous factual and policy reasons that dictate opening all of the available spectrum for re-auction, eliminating the set-aside for small businesses, and using this opportunity to serve long-ignored rural communities.¹¹ Indeed, setting aside spectrum for entities that cannot perform or satisfy the principal statutory objective of the Budget Act – introducing additional competition – violates the Commission’s statutory

¹⁰ The initial C and F Block licensees were at least on the same general footing as the non-designated entity PCS licensees in having to compete as start-ups with the incumbent cellular operators. Now, however, due to the rapid buildout of A and B Block PCS and specialized mobile radio (“SMR”) incumbents, the circumstances are dramatically different. New set-aside licensees have little hope of garnering the financial and technical resources to match increasingly mature existing operations.

¹¹ See Nextel Petition at 11-16; Nextel Reply at 11-18. Nextel has, however, supported the continued use of small business bidding credits in lieu of the set-aside.

mandate.¹² The record irrefutably establishes that licenses in major metropolitan areas, as well as even medium size areas, are ill-suited to successful development by small businesses.¹³

The Los Angeles BTA provides a telling example. As the sixth or seventh player in the Los Angeles CMRS market, a new entrant offering “copy-cat” cellular service would be unable to achieve significant market share. A new entrant would therefore likely construct and deploy a third generation high-speed data and voice system (WCDMA).¹⁴ To cover adequately the Los Angeles BTA, it would have to construct approximately 2,000 cell sites prior to launching service. In today’s market, unlike the cellular duopoly market of the 1980s, this small business new entrant cannot launch service before its coverage is comparable to that of its competitors,

¹² While the courts generally defer to the Commission’s predictive judgment when establishing policy, in the present case, the Commission does not need to rely on predictive judgment. Indeed, the Commission has plain evidence that the set-aside does not advance competition in the CMRS marketplace. Thus, the Commission is foreclosed from continuing its set-aside of C and F Block spectrum for small businesses. *See, e.g., International Ladies’ Garment Workers Union v. Donovan*, 722 F.2d 795, 821-822 n.56 (D.C. Cir. 1983), *cert. denied*, 469 U.S. 820 (1984) (“[T]here is no indication in [Supreme Court cases reviewing FCC decisions] that agencies can ignore important factors in making predictions, or can reach judgments that are irrational given the relevant evidence in the record.”)

¹³ *See* John Sullivan, *The FCC Gets One Right with Spectrum Auction Revisions*, WIRELESS INSIDER, June 12, 2000, at 5 (“I still don’t think anyone that can pass C-Block eligibility requirements is going to be able to compete against the big boys in Tier 1 markets. That means that one of the new 10 MHz C-Block licenses in Tier 1 markets will be problematic. Either it will remain economically dead, or it will end up outside the normal channels, in the hands of some kind of specialized operator not competing directly with the voice giants.”).

¹⁴ Nextel is making this assumption based on the changes and developments occurring in the global wireless industry. As the number of competitors increases and the technology continues to improve, a new entrant, offering nothing more than a digital cellular service – similar to the service that has now been available for five or more years and is being offered by a number of other parties – cannot distinguish itself. If a sixth or seventh entrant in the market cannot provide a differentiated product, or one that provides services competitive with those of the incumbents, the new entrant cannot attract a sufficient market share to support its enormous infrastructure and spectrum investment.

thus the need to construct some 2,000 cell sites prior to signing up even one customer. This number would have to increase to nearly 3,000 by 2009 to provide sufficient capacity for the carrier's subscriber base, assuming the carrier captured about 2 million subscribers.¹⁵

Such a network would require funding of approximately \$2.1 billion (mostly network capital expenditures), not counting the cost of acquiring the spectrum, before the carrier's operations become cash flow positive, which would occur at the earliest in 2007. Using the average cost of spectrum in the recently-completed spectrum auction in the United Kingdom of \$120 per POP, a 10 MHz license in the Los Angeles BTA would cost this small business approximately \$600 million.

Thus, to do nothing more than turn on the system, this new entrant, with total assets of \$500 million or less, would have to spend approximately \$2.7 billion. Even if this new entrant could generate profits from the business, it is highly unlikely that these profits would produce enough cash to fund even the interest payments on this \$2.7 billion – approximately \$390 million per year – much less make the principal repayment. This conclusion is highlighted in Exhibit 1, which estimates that the Net Present Value (“NPV”) of the 2001-2009 cash flows of this business opportunity in the Los Angeles BTA is a large negative number – *negative* \$300 million

¹⁵ See Declaration of Michael T. Sicoli attached as Exhibit 1. This subscriber number assumes total wireless market penetration of 77% in 2009 and a corresponding market share for this new entrant of 15% – an arguably aggressive carrier market share, given that this new entrant will be growing its customer base (beginning in the 2002-2003 timeframe) at a time when the rate of overall wireless growth will be slowing.

– indicating an extremely poor business proposition even before factoring in spectrum costs.¹⁶

Including spectrum costs, the NPV becomes *negative* \$900 million.

The investment required to build out a market, moreover, is not automatically reduced simply because the population of the market is lower: due to the propagation characteristics of 1.9 GHz spectrum and the requirements for providing high data rates, the geography of the metropolitan area has a significantly greater impact on the build-out cost than does population in most markets. Therefore, even analyzing a BTA smaller than Los Angeles, Nextel has concluded that market entry, in most cases, is financially prohibitive for a true small business. For example, construction of a 3G high-speed data network in Norfolk, Virginia, would require funding of approximately \$550 million before the carrier's operations become cash flow positive.¹⁷ Adding in spectrum costs at \$120 per POP, the new entrant's total upfront investment would be approximately \$620 million. Interest alone on the debt to fund this investment would be approximately \$90 million per year. Similarly, a 10 MHz system with voice and high-speed data in the San Diego BTA would require funding of up to \$725 million in addition to spectrum costs, which based on the U.K. model, would be an additional \$100 million. The realities of

¹⁶ While Nextel's market analysis indicates that new market entrants will have negative cash flows if they attempt to be a new competitor in a particular BTA, established carriers, either carriers that already have a license in the market in question or that have established systems elsewhere, will have a very different set of cost and revenue figures. For these established carriers the value of the licenses is not negative, even at spectrum acquisition costs of \$120 per POP.

¹⁷ Declaration of Michael T. Sicoli.

today's wireless telecommunications marketplace make small business entry cost prohibitive in most markets, and a set-aside block of spectrum is therefore not in the public interest.¹⁸

Given the ownership and financial restrictions the Commission has placed on companies seeking to qualify as designated entities, restrictions not shared by their competitors, these entities will be faced with difficult, if not impossible, hurdles to finance their start-up operations through equity – the manner in which most start-up companies get their businesses off the ground. Add to that their limited assets and lack of operating history, and these potential new entrant designated entities also will find it difficult, if not impossible, to convince lenders (particularly large lenders prohibited by the Commission's rules from exercising control over the entity) to provide the hundreds of millions of dollars – even billions in some cases – needed to construct and operate their systems. To the extent that a small business was able to secure financing in these amounts, the cost of that financing would be prohibitive, leaving the new entrant with no ability to earn a positive rate of return on its business. This conclusion is demonstrated in Exhibit 1, as the Net Present Value of the 2001-2009 cash flows for each of the three example markets (Los Angeles, Norfolk and San Diego) is negative, indicating that the return on these opportunities would not exceed the cost of capital.¹⁹

¹⁸ Some might argue that if a set-aside is maintained, small businesses will be able to cost effectively obtain licenses because they will limit their bids to per POP prices at which their businesses can be viable. Because, however, spectrum costs amount to ten percent or less of the total costs facing a new market entrant, lower prices in a designated entity-only auction will not be sufficient to change the economics of small business new market entry.

¹⁹ Indeed, the only financial “out” for these companies would be to sell the licenses to an established carrier as soon as possible once the designated entity restrictions have ended. While this would enrich the small businesses who are able to obtain and “flip” licenses in this manner, it would do nothing to enhance competition long term.

(2) If Any Set-Aside Is Maintained, It Must Be Limited to Markets Below One Million POPs.

To the extent the Commission nonetheless believes a set-aside is required by Section 309(j), despite strong arguments to the contrary, it should be strictly limited. While any population number chosen will be somewhat arbitrary, Nextel believes this set-aside should be limited to a single 10 MHz license in only those markets at or below one million POPs.²⁰ Nextel's analysis demonstrates that, in a vast majority of the BTAs, a 10 MHz license at 1.9 GHz, constructed to accommodate the requirements for providing high data rates in third generation technologies, will provide the capacity necessary to serve any number of customers associated with a reasonable per-carrier market share.²¹ For example, in Norfolk, the network constructed and placed in operation in 2003 will provide sufficient capacity to serve the carrier's

²⁰ The arbitrariness of any population figure chosen to distinguish "Tier 1" from "Tier 2" licenses is underscored by the fact that the population figures that are being used for this auction are over 10 years old. Major population shifts have occurred over the past decade and if a population cut-off number is chosen, many markets will be placed in the wrong Tier if stale data is used. To illustrate, attached as Exhibit 2 is a comparison of the population figures being used in this reauction and 1999 estimated population figures. As the chart shows, a number of markets, such as San Diego, will be in the wrong Tier if the proposals in the *Further Notice* are adopted. In addition, as Nextel has already explained, any artificial cut-off will prevent bidders from aggregating adjacent market areas, contrary to economies of scope and scale and against the best interests of consumers. *See, e.g.*, Nextel Comments at n. 6 (explaining how if SBC's 700,000 cut-off is adopted, adjacent markets in the New York area will not be available to some bidders).

²¹ The combination of a high-speed data system and the propagation characteristics of 1.9 GHz spectrum results in small cell site coverage areas, that leads to the construction of additional (smaller) cell sites. While this requires a greater capital expenditure up front, the system will have significant capacity, thus eliminating the need to construct "capacity" sites later.

growing customer base in 2009. Thus, an entity entering the market today to provide such services would not need an additional 10 MHz to fulfill customer demand.²²

Limiting the set-aside spectrum as Nextel proposes will free up 10 MHz of spectrum in markets where it can be put into use quickly. Nextel's proposal, moreover, does not preclude any qualified small business entity from bidding for the new licenses and receiving a significant bidding credit vis-à-vis other bidders.²³ Rather than encumbering 66% of the C Block licenses with artificial restrictions, this proposal would reserve nearly 20% of the C Block licenses for the small business set-aside program, while allowing small businesses to bid on any license in the auction. Given the tremendous challenges that small businesses face in successful deployment, the Commission should be conservative in reserving spectrum. Where spectrum is truly suitable for small business (*i.e.*, in industries where the cost of entry is not greater than the value of the small business itself), spectrum set-asides have not been needed to provide small businesses opportunities to participate.²⁴ For these reasons, the Commission should emulate its successful precedents by permitting bidding credits for small businesses, rather than perpetuating the use of spectrum set-asides, which have proven unsuccessful in creating and enhancing small business opportunities.

²² In any case, Nextel is not suggesting that there be any restrictions on the eligibility of small or large businesses to bid on all of the reauctoned licenses if their business plans so require, subject to the existing spectrum cap.

²³ As explained below, bidding credits successfully have placed spectrum in the hands of small businesses. Not only are set-asides, therefore, not required by law, they also are not necessary as a practical matter.

²⁴ See *Further Notice* at ¶ 40.

B. Bidding Credits Effectively Assure Small Business Opportunities

The Commission's auction experience demonstrates that small businesses have been extraordinarily successful in using bidding credits to compete against larger entities. As Dr. Gregory Rosston has explained, an examination of FCC auctions as of March 1 reveals that in those auctions where small businesses competed head-to-head with large businesses for licenses, small businesses won more than half of the licenses auctioned.²⁵ Most recently, the 39 GHz auction closed with 18 of the 29 winning bidders claiming small business status. Thomas Sugrue, Chief of the Wireless Telecommunications Bureau, commented that the auction "created significant opportunities for small businesses, which acquired 849 licenses in 171 markets for various exciting new wireless services. This represents almost 40% of the total number of licenses won."²⁶ Indeed, of the nearly 5,000 licenses in auctions without set-sides, more than 300 different small businesses have obtained more than 2,600 licenses in auctions where there has been direct competition between designated entities and non-designated entities. The Commission's own auction data thus proves that set-asides are not necessary, or desirable, when spectrum is truly suitable for use by small businesses.

C. The F Block and Previously Unsold 15 and 30 MHz Licenses Must Be Open to All Qualified Bidders

The *Further Notice* seeks comment on the eligibility requirements for available 10 MHz F Block licenses and 15 MHz C Block licenses. Nextel supports an open auction for this spectrum, consistent with the Commission's mandate to ensure development and rapid

²⁵ See, e.g., Nextel Reply, Declaration of Gregory L. Rosston at 5.

²⁶ Federal Communications Commission, "39 GHz Auction Raises \$410,649,085.00," *News Release*, May 8, 2000.

deployment of PCS spectrum. In addition, the previously auctioned 30 MHz licenses should also be open to all qualified bidders.

Even if the Commission remains reluctant to eliminate its set-aside because of purported commitments it made to C Block licensees regarding future reauction of C Block licenses, there is no similar F Block history of licensee insolvency, financial distress, and widespread bankruptcy that might persuade the Commission to continue a set-aside. Indeed, despite similarities in the regulatory design of both the C and F Block auctions, the Commission in 1998 found that the F Block licensees did not require the same refinancing relief as the C Block licensees. At that time the Commission observed: “the difficulties in financing the unexpectedly high prices bid in the C-block auctions is a sufficiently distinguishing basis for limiting relief to C block licensees.”²⁷ F Block licensees, therefore, were never permitted to restructure their financing options nor were they provided any form of a “grandfathering” exception for future auctions. Moreover, as the Commission recognizes, there is already considerable set-aside spectrum in almost all available F Block markets, *i.e.*, there is a 30 MHz license currently held by a C Block small business entrepreneur.

Because the need for further “protection” does not exist in the F Block, there simply is no reason to continue a set-aside for these licenses. By allowing open eligibility in the F Block, the Commission will significantly increase the rate of build-out of these licenses, which has been less than expeditious up to this point, and thus increase the rate at which consumers receive

²⁷ See *Highly Ambivalent FCC Makes Relatively Minor Adjustments to C-Block Restructuring System; Reauction Postponed Indefinitely*, PCS WEEK, April 1, 1998 (citing Amendment of the Commission’s Rules Regarding Installment Payment Financing for Personal Communications
continued...

service. The public interest plainly supports opening the F Block to all potential qualified bidders.

The eligibility restrictions must also be eliminated for all available 15 MHz C Block licenses and the 30 MHz licenses that went unsold in the last reauction. As the *Further Notice* states, “all of the 15 MHz licenses available in Auction No. 35 were available in restricted Auction No. 22, yet remained unsold.”²⁸ In addition to the 15 MHz licenses, however, 27 of the available 30 MHz C Block licenses also went unsold.²⁹ This available spectrum, located principally in rural markets, has lain fallow since the Commission’s initial PCS auctions. Moreover, there has been no indication that continuing to limit artificially the eligibility for those licenses will lead to a different result in the upcoming reauction. While several small businesses have asserted that they are more likely than others to offer service in rural markets, they have consistently failed to bid on these licenses. The unsold rural licenses from Auction No. 22 speak for themselves.

Opening the reauction on these 15 and 30 MHz licenses to other market participants will advance the development and rapid deployment of new services and ensure that these licenses are put in service promptly to serve the American public and introduce further CMRS competition in these markets. The Commission should thus eliminate the eligibility restrictions

...continued

Services (PCS) Licenses, *Order on Reconsideration of the Second Report and Order*, 13 FCC Rcd 8345, 8377 (1998)).

²⁸ *Further Notice* at ¶ 18.

²⁹ See Nextel Reply at Exhibit B for a list of the unsold licenses in the last reauction.

for the previously unsold 15 and 30 MHz C Block licenses to ensure that spectrum located in rural markets will not continue to go unused.³⁰

III. IF ANY FORM OF SET-ASIDE IS MAINTAINED, IT MUST BE LIMITED TO TRUE SMALL BUSINESSES

The Commission time and again has stated that the C and F Block spectrum set-aside was intended to benefit small businesses that, according to the Commission, could not successfully compete with large entities in open auctions to acquire PCS spectrum.³¹ Given this policy rationale for the set-aside, it makes no sense to grandfather the formerly small businesses that have grown or merged to many times beyond the Commission's small business set-aside qualifications. Simply stated, they are no longer in need of this benefit and do not qualify for it. Ironically, if the grandfathering exception is maintained, the multi-billion dollar enterprises the set-aside was meant to exclude from bidding will be pitted against true small businesses that comply with the small business asset caps. Grandfathering undercuts the small business

³⁰ In addition to eliminating the eligibility restrictions for the upcoming reauction, Nextel agrees with the Commission's proposal to eliminate the current limit on the number of C and F Block licenses won at auction that an entity can hold. *See Further Notice* at ¶ 47. Eliminating the restriction will increase the number of licenses available to auction participants and thus increase the likelihood that these licenses will be put to use by a variety of industry participants. Similarly, Nextel agrees with the Commission's proposal to eliminate the transfer restrictions on the no longer set-aside C and F Block licenses to correspond with changes in the eligibility requirements. *See Further Notice* at ¶ 44. Finally, Nextel also supports the use of combinatorical bidding for the reauction and urges the Commission to consider packages of licenses that correspond to the bidder preferences disclosed in the record thus far. *See Further Notice* at ¶ 17.

³¹ *See, e.g.,* Implementation of Section 309(j) of the Communications Act – Competitive Bidding, *Fifth Report and Order*, PP Docket No. 93-253, 9 FCC Rcd 5532, 5585 (1994) (“We agree that small entities stand little chance of acquiring licenses in these broadband auctions if required to bid against existing large companies, particularly large telephone, cellular and cable companies.”).

protection the Commission repeatedly has insisted is the primary reason for a continued set-aside.

A. No Public Policy Purpose Is Served by the Grandfathering Exception

The *Further Notice* seeks comment on whether to continue the “grandfathering” exception for entrepreneur eligibility in future C Block auctions. Specifically, the *Further Notice* seeks comment on a tentative conclusion to clarify that the grandfathering exception only applies if both entities pre-merger would have qualified for grandfathering status. While this clarification weeds out one form of obvious sham, it does nothing to address the underlying problem: many entities that arguably may be grandfathered are not, when viewed in light of the Commission’s rules, small businesses today. There is no reason for the Commission to countenance massive loopholes to the existing small business eligibility rules that allow “elephants” to claim they are “mice.” Therefore, if small business set-asides are maintained, the grandfathering provision should be totally eliminated. Application of the current grandfathering provision, which is scheduled to end by March 2001, is contrary to the purpose of the Commission’s eligibility rules and makes a mockery of the concept of set-asides for small businesses.

For example, should the Commission permit successor entities to participate in the upcoming auction, regardless of their size and eligibility, those entities may include Tritel, Inc., a leading AT&T affiliate that has announced plans to merge with TeleCorp PCS Inc. in a \$5.3 billion transaction. Yet Tritel would be a “small business,” eligible because it can trace its roots to Mercury Communications, a cellular company in the Southeast during the mid-1990s that was a successful bidder in the original C Block auctions. As evidenced by its exponential growth, Tritel is no longer a small business entrepreneur as envisioned in the set-aside rules. It is a new

and successful company with operating revenues, substantial assets and capital resources well in excess of the eligibility caps for the C Block PCS reauctions.

Similarly, under one interpretation of the proposed grandfathering rule, the combination of VoiceStream Wireless and Omnipoint Corporation, an entity with a current market capitalization approaching \$30 billion,³² would be eligible to bid on licenses reserved for small businesses because VoiceStream's predecessors, Western Wireless and Omnipoint, both bid in the first C Block auction. As these examples show, the grandfathering exception undermines the entire policy reason behind the C and F Block spectrum set-aside. It must, therefore, be eliminated.

Moreover, the exception only grandfathers entities that *participated* in the first two C Block auctions held in 1995 and 1996, but does not grandfather entities that participated in either the first F Block auction or the first C Block reauction that was held last year.³³ This highlights the inherent irrationality of the proposed grandfathering. As the courts have found, the Commission may not waive or make an exception to a rule that essentially eviscerates that rule.³⁴

³² See Market Guide, *Profile – VoiceStream Wireless Corp.* (last modified June 19, 2000) <<http://biz.yahoo.com/p/v/vstr.html>> (reporting a \$29.8 billion market capitalization); VoiceStream Wireless Corp., “VoiceStream Wireless Closes Omnipoint Merger,” *Press Release* (Feb. 28, 2000) (reporting a \$26 billion market capitalization immediately following the merger).

³³ TLA Spectrum, LLC and Telepak, Inc., both winners in the reauction last year, have questioned how the Commission can rationally exclude them from this year's reauction when Commission rules allow them to acquire C and F Block licenses in the after-market, but not at auction. See Letter from David L. Nace, Attorney for TLA Spectrum, LLC, Lukas, Nace, Gutierrez & Sachs, to Magalie Roman Salas, Secretary, Federal Communications Commission (March 24, 2000); Letter from David L. Nace, Attorney for Telepak, Inc., Lukas, Nace, Gutierrez & Sachs, to Magalie Roman Salas, Secretary, Federal Communications Commission (March 24, 2000).

³⁴ See, e.g., *WAIT Radio v. FCC*, 418 F.2d 1153, 1157-59 (D.C. Cir. 1969).

Further, courts have struck down the Commission's actions as arbitrary and capricious when the agency's standards were inconsistently applied.³⁵ As the grandfathering exception eviscerates the very basis of the C and F Block spectrum set-aside and advances no policy purpose, it must be eliminated. The Commission should be mindful that even a single problematic transaction could jeopardize what otherwise may have been a rational set-aside policy, much as happened with the minority tax certificate policy.³⁶

Should the Commission decide to maintain any form of a grandfathering exception, it must limit that exception to only those original licensees with ownership changes that, in aggregate, are no greater than 20 percent. To allow merged entities and successor companies with substantially different ownership interests that could not themselves qualify under the eligibility rules to bid for any set-aside licenses in the upcoming reauction would (1) provide a regulatory competitive advantage to certain CMRS providers; (2) destroy the whole point of having eligibility rules by placing true small business in head-to-head competition with large businesses seeking to acquire C and F Block spectrum; and (3) result in arbitrary and capricious auction rules.

B. Small Business Eligibility Must be Based on Complete and Current Financial Information

In addition to eliminating the grandfathering exception, the Commission must clarify that any attempt to claim small business benefits of any sort in the upcoming reauction must be based

³⁵ See, e.g., *Illinois Bell Telephone v. FCC*, 740 F.2d 465, 470 (7th Cir. 1984) (“patently inconsistent application of agency standards to similar situations lacks rationality and is arbitrary”) (citing *Contractors Transport Corp. v. United States*, 5 F.2d 1162 (4th Cir. 1976)).

³⁶ See, e.g., Erwin G. Krasnow and Lisa M. Fowlkes, *The FCC Minority Tax Certificate Program; A Proposal for Life After Death*, 51 Fed. Comm. L.J. 665, 671-72 (1999).

on financial information that fairly portrays the circumstances of the applicant at the time a short form application is filed. The Commission must, therefore, ensure that if there has been a disqualifying material change in eligibility for small business benefits, a reauction applicant's revenues and total assets are determined at the time its short form auction application is filed.

Because the Commission's definition of "total assets" states that assets shall be "evidenced by the [applicant's] most recent audited financial statements,"³⁷ current rules could be read to allow entities that have grown significantly above the \$500 million asset cap to acquire set-aside C Block licenses in the reauction because of the substantial lag time between annual audited financial statements. One possible example of this is illustrated by Leap Wireless International, Inc. ("Leap"). Leap was created in 1998 after the C Block auction and thus would not qualify for the grandfathering exception. The Commission, after a long and arduous eligibility proceeding, required Leap to restructure certain investor arrangements to avoid undue influence on Leap by its major backer, Qualcomm, Inc. Currently, Leap's fiscal year ends August 31 and the reauction short-form application deadline is October 16. Because entities usually take several months to get their end of year audited financial statements, under a literal interpretation of the rules, Leap may seek to use its audited financial statements from 1999 to slip in under the \$500 million total asset cap, notwithstanding its acknowledged current reported market capitalization of \$1.3 billion.³⁸ Leap has made no secret of, or apologies for, the fact that this is exactly what it intends to do. In fact, Leap's Senior Vice President — Public Affairs has

³⁷ 47 C.F.R. § 24.720(g).

³⁸ See CBS MarketWatch Online, *Fundamentals for Leap Wireless, International, Inc.*, (visited June 12, 2000) at <http://www2.marketwatch.com/quotes/extended.asp?source=htx/http2_mw&symb=lwin>.

admitted that Leap is above the \$500 million asset cap,³⁹ or “almost certainly will be” after its next preparation of audited financial statements for the fiscal year ending August 31.⁴⁰

The fact that the Commission allows C Block entities “graceful growth” exceptions to the C Block eligibility rules for their present license holdings should not be exploited to give large, successful companies the competitive advantage of set-aside eligibility in the reauction. It undermines the integrity of Commission policies and allows companies to participate that would not have the faintest hope of qualifying if they actually had to demonstrate they were within the financial caps of the rules. If the Commission does not firmly close this loophole, Leap may walk away with set-aside licenses that are not available to its similarly-situated competitors, and are intended to assist current small businesses, not former small businesses.⁴¹

Thus, the Commission must ensure that revenue and asset limits that determine C Block eligibility be determined as of an application’s filing date if an applicant’s last available audited financial statements are materially different.⁴² This requirement would not create a significant

³⁹ *Nextel Questions Leap on Purchase of Licenses*, TELECOMMUNICATIONS REPORTS, June 5, 2000, at 25.

⁴⁰ See In the Matters of Applications of Beta Communications, L.L.C., Assignor, Leap Wireless International, Inc., Assignee, FCC File No. 0000110639, and Beta Communications, L.L.C., Assignor, Cricket Licensee (Reauction), Inc., Assignee, FCC File No. 0000110695, *Consolidated Opposition of Leap Wireless International, Inc.* (June 8, 2000) at 3.

⁴¹ In prior comments, Nextel observed that it was once a small business that succeeded without financial support from U.S. taxpayers. While it is good that the Commission has several C Block success stories it can look back on, it cannot ignore the fact that these companies now are well able to compete directly with other significant operators and do not require any form of set-aside protection. The mere fact that a company was “small” on the date C block short forms were filed does not justify setting aside spectrum for them in 2000, anymore than the Commission would be justified in setting aside spectrum for Nextel simply because it once was a “small” business.

⁴² Those applicants claiming set-aside benefits should specifically be required to certify, to the extent they are relying upon their last available audited financial statements, that the assets relied

continued...

hardship on most small business applicants because only those applicants with material changes would be subjected to this additional burden. Thus, affected applicants should be required to report their total assets to the best of their ability as of the application's filing date.⁴³ The Commission should confirm that it does not intend to allow businesses that do not actually qualify to benefit from any continued license set-aside program.

IV. CONCLUSION

Almost six months ago Nextel asked the Commission to issue an expedited Notice of Proposed Rulemaking to change the C Block band plan and lift eligibility restrictions for the scheduled C and F Block reauction.⁴⁴ Nextel is pleased that the Commission has issued the requested *Further Notice* and that the *Further Notice* proposes changes to the auction rules that are in keeping with the Commission's statutory mandate to fashion its auction rules in the manner that best meets the public interest and the mandates of Section 309(j).

Now is not, however, the time for timid decision making. Bold Commission action is required to ensure that these significant blocks of spectrum in the top major markets in our country are used wisely and efficiently to bring advanced services and innovative competition to American consumers. Accordingly, Nextel urges the Commission to adapt its rules to the new

...continued

upon have not changed in a manner that would impact on the applicant's eligibility under the set-aside qualification rules.

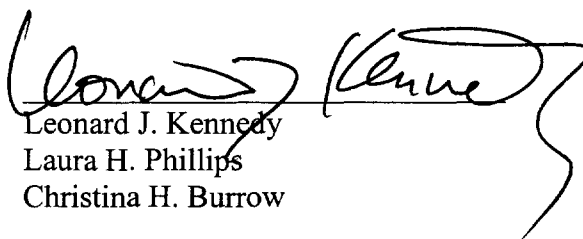
⁴³ Section 1.65 of the Commission's rules, 47 C.F.R. §1.65, already obligates applicants to update pending applications if there is a material change in the applicant's circumstances. It should be no different where an entity has outgrown the asset caps for small business designation by the short form filing deadline.

⁴⁴ Nextel Petition at 25.

wireless marketplace reality by (1) eliminating designated entity-only restrictions completely or, alternatively, on 30 MHz of C Block spectrum in all available reauction markets above 1 million POPS and on 20 MHz of C Block spectrum in all available reauction markets below 1 million POPS; (2) eliminating designated entity-only restrictions on all F Block and previously auctioned 15 and 30 MHz C Block spectrum in all available reauction markets; and (3) eliminating the “grandfathering” eligibility loophole or, in the alternative, limiting the “grandfathering” eligibility loophole to true small businesses that require Commission set-asides to compete. Prompt action to adopt the rules outlined above will ensure that this long-fallow spectrum is finally put to productive use.

Respectfully submitted,

NEXTEL COMMUNICATIONS, INC.



Leonard J. Kennedy
Laura H. Phillips
Christina H. Burrow

DOW, LOHNES & ALBERTSON, PLLC
1200 New Hampshire Avenue, N.W.
Suite 800
Washington, D.C. 20036-6802
(202) 776-2000

NEXTEL COMMUNICATIONS, INC.
2001 Edmund Haley Drive
Reston, VA 20191
(703) 433-4000
Robert S. Foosaner
Lawrence R. Krevor
Laura L. Holloway

Its Attorneys
June 22, 2000

EXHIBIT 1

DECLARATION OF MICHAEL T. SICOLI

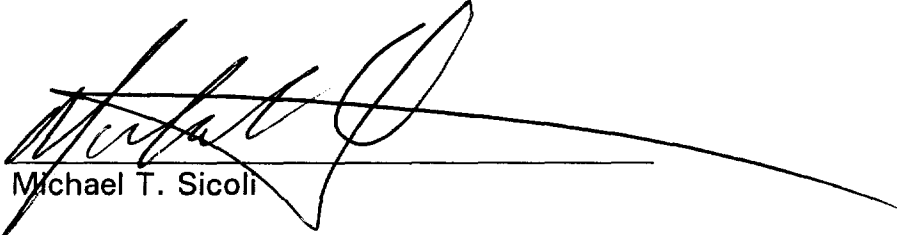
I, Michael T. Sicoli, hereby declare as follows:

1. My name is Michael T. Sicoli and my current position at Nextel Communications, Inc. is Director, Strategic Planning. I have been associated with Nextel since 1996, first as a consultant and then as Director of Finance for Analog Operations. I have been in my current position since September 1999. I have a BA in Economics from the College of William & Mary, and I have an MBA from the University of Virginia.
2. In my capacity, I am very familiar with Nextel's capital expenditures to date and with its projections for capital expenditures in the next several years.
3. Additionally, my job responsibilities include long range forecasting for the entire company, evaluating strategic initiatives that will enhance Nextel's competitiveness in the domestic and global wireless marketplace, and analyzing the information and intelligence that is available regarding the strategies and competitive developments of Nextel's wireless telecommunications competitors.
4. Based on my experience with Nextel and my familiarity with the business models generally used to analyze opportunities in the wireless industry, I have prepared a set of assumptions that are, in my opinion, reasonable for a new entrant contemplating the construction and operation of a wireless system to compete with the incumbent cellular, PCS and SMR providers in major metropolitan areas.
5. The basic assumption in my analysis is that a new entrant attempting to differentiate itself and compete with at least five existing providers in a market must build a third generation system that provides voice and high-speed data capabilities. Merely replicating the voice and low-speed data services that exist today is not, in my opinion, a business plan that will in today's market attract the users necessary to recoup the enormous investment required to construct a wireless system.
6. Additionally, my analysis assumes that despite having a differentiated product, a new entrant cannot launch service until it has replicated fully the coverage and quality provided by the incumbent wireless providers.

7. Based on these assumptions, I have reached the following conclusions:

- (a) Construction of a third generation wireless telecommunications system on 10 MHz in the Los Angeles BTA at 1.9 GHz would require
 - (1) construction of approximately 2,000 cell sites to achieve coverage comparable to that of existing providers, and to achieve the necessary capacity to permit high-speed data capabilities;
 - (2) construction of approximately 1,000 additional cell sites by 2009 to achieve the capacity necessary to meet the demand of approximately 2 million subscribers (assuming 77% total wireless penetration, and a 15% market share);
 - (3) a maximum funding requirement of approximately \$2.1 billion (excluding the cost of spectrum) prior to turning cash flow positive in 2007;
 - (4) the Net Present Value (NPV) of the future cash flows (2001-2009) of this business opportunity, excluding the cost of spectrum, is estimated to be negative \$300 million; and
 - (5) using the average price of spectrum in the recent United Kingdom auction of \$120 per POP, the estimated cost of 10 MHz of spectrum in the Los Angeles BTA would be an additional \$600 million.
- (b) Construction of a third generation wireless telecommunications system on 10 MHz in the Norfolk BTA at 1.9 GHz would require
 - (1) construction of approximately 600 cell sites to achieve coverage comparable to that of existing providers, and to achieve the necessary capacity to permit high-speed data capabilities;
 - (2) construction of no additional cell sites by 2009 to achieve the capacity necessary to meet the demand of approximately 195,000 subscribers (assuming 77% total wireless penetration and a 15% market share), since the capacity provided by the coverage sites of a high-speed data system at 1.9 GHz is more than sufficient to meet the demand of a market such as Norfolk;

- (3) a maximum funding requirement of approximately \$550 million (excluding the cost of spectrum) prior to turning cash flow positive in 2009;
 - (4) the NPV of the future cash flows (2001-2009) of this business opportunity, excluding the cost of spectrum, is estimated to be negative \$325 million; and
 - (5) using the average price of spectrum in the recent United Kingdom auction of \$120 per POP, the estimated cost of 10 MHz of spectrum in the Norfolk BTA would be an additional \$70 million.
- (c) Construction of a third generation wireless telecommunications system on 10 MHz in the San Diego BTA at 1.9 GHz would require
- (1) construction of approximately 850 initial cell sites to achieve coverage comparable to that of existing providers, and to achieve the necessary capacity to permit high-speed data capabilities;
 - (2) construction of no additional cell sites by 2009 to achieve the capacity necessary to meet the demand of approximately 353,000 subscribers (assuming 77% total wireless penetration and a 15% market share), since the capacity provided by the coverage sites of a high-speed data system at 1.9 GHz is more than sufficient to meet the demand of a market such as San Diego;
 - (3) a maximum funding requirement of \$725 million (excluding the cost of spectrum) prior to turning cash flow positive in 2008;
 - (4) the NPV of the future cash flows (2001-2009) for this business opportunity, excluding the cost of spectrum, is estimated to be negative \$350 million;
 - (5) using the average price of spectrum in the recent United Kingdom auction of \$120 per POP, the estimated cost of 10 MHz of spectrum in the San Diego BTA would be an additional \$100 million.



Michael T. Sicoli

Date: June 21, 2000

EXHIBIT 2

BTA/ Market	BTA/ Market Name	Population*	MHz	Population Estimate 1/1/99	Difference
321	New York, NY	18,050,615	30	18,691,600	640,985
262	Los Angeles, CA	14,549,810	30	16,409,300	1,859,490
78	Chicago, IL	8,182,076	10	8,794,300	612,224
404	San Francisco, CA	6,420,984	10	7,271,000	850,016
346	Philadelphia, PA	5,899,345	10	5,982,100	82,755
101	Dallas, TX	4,329,924	10	5,183,700	853,776
51	Boston, MA	4,133,895	30	4,262,200	128,305
461	Washington, DC	4,118,628	30	4,562,800	444,172
196	Houston, TX	4,054,253	30	4,811,000	756,747
24	Atlanta, GA	3,197,171	10	4,087,800	890,629
84	Cleveland, OH	2,894,133	30	2,958,200	64,067
298	Minneapolis, MN	2,840,561	30	3,151,100	310,539
394	St Louis, MO	2,742,114	10	2,842,100	99,986
413	Seattle, WA	2,708,949	30	3,162,000	453,051
350	Pittsburgh, PA	2,507,839	30	2,470,600	-37,239
402	San Diego, CA	2,498,016	30	2,860,500	362,484
29	Baltimore, MD	2,430,563	30	2,546,400	115,837
440	Tampa, FL	2,249,405	30	2,518,500	269,095
110	Denver, CO	2,073,952	30	2,544,700	470,748
81	Cincinnati, OH	1,990,451	30	2,153,100	162,649
226	Kansas City, MO	1,839,569	30	2,011,000	171,431
297	Milwaukee, WI	1,751,525	10	1,848,900	97,375
358	Portland, OR	1,690,930	10	2,036,800	345,870
358	Portland, OR	1,690,930	30	2,036,800	345,870
74	Charlotte, NC	1,671,037	30	1,959,700	288,663
389	Sacramento, CA	1,656,581	10	1,915,400	258,819
324	Norfolk, VA	1,635,296	30	1,747,100	111,804
401	San Antonio, TX	1,530,954	30	1,798,800	267,846
364	Providence, RI	1,509,789	30	1,508,300	-1,489
95	Columbus, OH	1,477,891	30	1,631,400	153,509
263	Louisville, KY	1,352,955	30	1,454,200	101,245
204	Indianapolis, IN	1,321,911	30	1,477,100	155,189
399	Salt Lake City, UT	1,308,035	10	1,551,200	243,165
329	Oklahoma City, OK	1,305,472	30	1,393,300	87,828
336	Orlando, FL	1,256,429	30	1,595,300	338,871
174	Greensboro, NC	1,241,349	30	1,375,300	133,951
106	Dayton, OH	1,207,689	30	1,219,800	12,111
212	Jacksonville, FL	1,114,847	30	1,331,700	216,853
374	Richmond, VA	1,090,869	30	1,205,200	114,331
7	Albany, NY	1,028,615	30	1,041,800	13,185
318	New Haven, CT	978,311	30	977,400	-911
27	Austin, TX	899,361	30	1,178,200	278,839
245	Las Vegas, NV	857,856	10	1,464,500	606,644
448	Tulsa, OK	836,559	10	930,500	93,941

Population estimate from Rand McNally Commercial Atlas Marketing Guide, 2000.

192	Honolulu, HI	836,231	10	872,300	36,069
252	Lexington, KY	816,101	30	901,100	84,999
177	Greenville, SC	788,212	10	874,300	86,088
480	Worcester, MA	709,705	30	733,700	23,995
8	Albuquerque, NM	688,612	15	794,000	105,388
10	Allentown, PA	686,688	30	716,800	30,112
412	Scranton, PA	678,410	30	664,700	-13,710
447	Tucson, AZ	666,880	15	833,400	166,520
181	Harrisburg, PA	654,808	10	690,200	35,392
128	El Paso, TX	649,860	30	770,500	120,640
390	Saginaw-Bay, Mi	615,364	30	632,200	16,836
425	Spokane, Wa	612,862	10	732,400	119,538
376	Roanoke, VA	609,215	30	645,200	35,985
91	Columbia, SC	568,754	10	639,400	70,646
274	Manchester, NH	540,704	30	585,200	44,496
428	Springfield, MO	532,880	30	632,400	99,520
408	Sarasota, FL	513,348	30	599,500	86,152
20	Asheville, NC	510,055	30	575,100	65,045
135	Evansville, IN	504,859	30	518,600	13,741
99	Corpus Christi, TX	499,988	10	545,500	45,512
241	Lansing, Mi	489,698	30	514,600	24,902
357	Portland, ME	471,614	30	501,600	29,986
361	Poughkeepsie, NY	424,766	30	433,600	8,834
268	McAllen, TX	424,063	30	588,900	164,837
240	Lancaster, PA	422,822	10	460,500	37,678
483	York, PA	417,848	10	464,200	46,352
50	Boise, ID	416,503	10	546,800	130,297
239	Lakeland, FL	405,382	30	471,000	65,618
107	Daytona Beach, FL	399,413	10	470,600	71,187
289	Melbourne, FL	398,978	30	471,700	72,722
63	Burlington, VT	369,128	15	396,500	27,372
319	New London, CT	357,482	30	352,800	-4,682
43	Binghamton, NY	356,645	15	342,700	-13,945
370	Reading, PA	336,523	10	357,700	21,177
179	Hagerstown, MD	327,693	30	354,700	27,007
25	Atlantic City, NJ	319,416	10	337,400	17,984
127	Elmira, NY	315,038	15	313,900	-1,138
463	Watertown, NY	296,253	15	299,500	3,247
189	Hickory, NC	292,409	30	324,000	31,591
441	Temple, TX	291,768	30	352,100	60,332
56	Brownsville, TX	277,825	30	345,900	68,075
452	Tyler, TX	269,762	10	302,300	32,538
365	Provo, UT	269,407	10	358,300	88,893
159	Gainesville, FL	260,538	30	312,900	52,362
331	Olympia, WA	258,937	30	324,100	65,163
116	Dover, DE	251,257	10	293,000	41,743
235	Lafayette, IN	247,523	30	264,400	16,877
218	Johnstown, PA	241,247	30	237,000	-4,247
330	Olean, NY	239,343	30	240,200	857

Population estimate from Rand McNally Commercial Atlas Marketing Guide, 2000.

251	Lewiston, ME	221,697	15	220,900	-797
47	Bloomington, IN	217,914	30	233,100	15,186
339	Paducah, KY	217,082	30	230,900	13,818
482	Yakima, WA	215,548	10	245,300	29,752
220	Joplin, MO	215,095	30	235,800	20,705
216	Janesville, WI	214,510	10	236,700	22,190
67	Carbondale, IL	209,497	30	214,700	5,203
288	Medford, OR	209,038	10	249,700	40,662
244	Las Cruces, NM	197,166	30	244,100	46,934
326	Ocala, FL	194,833	10	246,200	51,367
55	Bremerton, WA	189,731	15	234,100	44,369
215	Jamestown, NY	186,945	30	180,100	-6,845
407	Santa Fe, NM	174,526	15	207,000	32,474
398	Salisbury, MD	163,043	30	176,700	13,657
398	Salisbury, MD	163,043	10	176,700	13,657
460	Walla Walla, WA	151,563	10	170,000	18,437
59	Bryan, TX	150,998	30	173,500	22,502
265	Lufkin, TX	144,081	30	160,100	16,019
431	Steubenville, OH	142,523	30	134,200	-8,323
93	Columbus, IN	139,128	30	155,400	16,272
172	Greeley, CO	131,821	30	162,900	31,079
36	Bellingham, WA	127,780	30	161,300	33,520
225	Kankakee, IL	127,042	10	134,800	7,758
117	Du Bois, PA	124,180	15	127,900	3,720
45	Bismark, ND	123,682	30	128,200	4,518
352	Plattsburgh, NY	123,121	30	117,600	-5,521
299	Minot, ND	122,687	30	119,500	-3,187
295	Middlesboro, KY	121,217	15	119,400	-1,817
416	Sharon, PA	121,003	15	122,300	1,297
190	Hilo, HI	120,317	10	142,100	21,783
307	Mount Pleasant, Mi	118,558	30	129,100	10,542
227	Keene, NH	111,709	30	116,000	4,291
250	Lewiston, ID	110,028	10	120,700	10,672
333	Oneonta, NY	107,742	15	106,500	-1,242
328	Oil City, PA	105,882	15	104,500	-1,382
77	Cheyenne, WY	103,939	30	108,300	4,361
222	Kahului, HI	100,504	10	121,300	20,796
388	Rutland, VT	97,987	15	98,900	913
317	New Castle, PA	96,246	15	95,300	-946
435	Stroudsburg, PA	95,709	15	128,100	32,391
385	Roseburg, OR	94,649	10	100,200	5,551
359	Portsmouth, OH	93,356	30	93,800	444
136	Fairbanks, AK	92,111	30	99,700	7,589
281	Marion, OH	92,023	30	98,200	6,177
203	Indiana, PA	89,994	15	89,000	-994
341	Paris, TX	89,422	30	92,300	2,878
363	Presque Isle, ME	86,936	30	73,700	-13,236
287	Meadville, PA	86,169	15	90,000	3,831
130	Enid, OK	85,998	30	87,900	1,902

Population estimate from Rand McNally Commercial Atlas Marketing Guide, 2000.

261	Longview, WA	85,446	10	98,500	13,054
261	Longview, WA	85,446	30	98,500	13,054
414	Sedalia, MO	79,705	15	89,100	9,395
356	Port Angeles, WA	76,610	15	95,300	18,690
221	Juneau, AK	68,989	30	74,500	5,511
470	West Plains, MO	67,165	30	75,600	8,435
64	Butte, MT	65,252	30	67,500	2,248
224	Kalispell, MT	59,218	30	71,900	12,682
188	Helena, MT	58,752	30	68,100	9,348
4	Ada, OK	52,677	30	54,100	1,423
254	Lihue, HI	51,177	10	56,500	5,323
259	Logan, WV	43,032	30	40,900	-2,132
Totals		160,273,503		177,247,300	16,973,797

Population estimate from Rand McNally Commercial Atlas Marketing Guide, 2000.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing "Comments of Nextel Communications, Inc., was sent via hand delivery, this 22nd day of June, 2000, to the following:

Magalie R. Salas
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Michael K. Powell
Commissioner
Federal Communications Commission
445 12th Street, SW, Room 8-A204
Washington, D.C. 20554

William E. Kennard
Chairman
Federal Communications Commission
445 12th Street, SW, Room 8-B201
Washington, D.C. 20554

Gloria Tristani
Commissioner
Federal Communications Commission
445 12th Street, SW, Room 8-C302
Washington, D.C. 20554

Susan Ness
Commissioner
Federal Communications Commission
445 12th Street, SW, Room 8-B115
Washington, D.C. 20554

Kathleen O'Brien Ham
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, SW, Room 3-C255
Washington, D.C. 20554

Harold Furchtgott-Roth
Commissioner
Federal Communications Commission
445 12th Street, SW, Room 8-A302
Washington, D.C. 20554

Clint Odom
Legal Advisor to Chairman Kennard
Federal Communications Commission
445 12th Street, SW, Room 8-B201
Washington, D.C. 20554

Thomas Sugrue, Chief
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, SW, Room 3-C252
Washington, D.C. 20554

Robert Pepper, Chief
Office of Plans and Policy
Federal Communications Commission
445 12th Street, SW, Room 7-C450
Washington, D.C. 20554

Christopher Wright
Officer of General Counsel
Federal Communications Commission
445 12th Street, SW, Room 3-C252
Washington, D.C. 20554

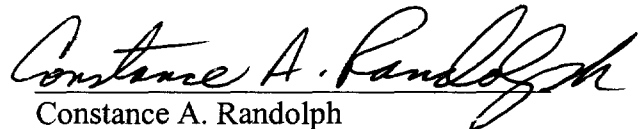
Mark Schneider
Senior Legal Advisor to
Commissioner Ness
Federal Communications Commission
445 12th Street, SW, Room 8-B115
Washington, D.C. 20554

Bryan Tramont
Legal Advisor to Commissioner
Furchtgott-Roth
Federal Communications Commission
445 12th Street, SW, Room 8-A302
Washington, D.C. 20554

Peter Tenhula
Senior Legal Advisor
to Commissioner Powell
Federal Communications Commission
445 12th Street, SW, Room 8-A204
Washington, D.C. 20554

Adam Krinsky
Legal Advisor to
Commissioner Tristani
Federal Communications Commission
445 12th Street, SW, Room 8-C302
Washington, D.C. 20554

Audrey Bashkin
Wireless Telecommunications Bureau
Auctions and Industry Analysis Division
Federal Communications Commission
445 12th Street, SW
Room 4-A665
Washington, D.C. 20554


Constance A. Randolph

June 22, 2000